IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2344 of 2001

with

SPECIAL CIVIL APPLICATION No 2345 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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THAKORE KANAKSINGH MOHANSINGH

Versus

COLLETOR OF PANCHMAHALS

Appearance:

1. Special Civil Application No. 2344 of 2001

MR MUKESH R SHAH for Petitioner No. 1-3

MR SP SEN AGP for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/09/2001

COMMON ORAL JUDGEMENT

#. Heard Mr.M.R.Shah, learned advocate appearing on behalf of the petitioners and Mr.S.P.Sen, learned AGP for respondents. In both these petitions, this Court has issued RULE and granted Interim relief in terms of Para-11[c] by order dated 4th April, 2001. The interim relief which has been granted by this Court has been ordered to be continued till further order by this Court vide order passed on 27th June, 2001. In these two petitions, since the issue raised for consideration is common, both these petitions are heard together and same are being disposed by common order.

The facts giving rise to these petitions are as under :-

So far as the petition - Special Civil Application No. 2344 / 2001 is concerned the case of the petitioners is that they are the owners of the lands bearing Survey No.92 / paiki sitauted at Limadiya, Taluka Lunawada admeasuring 2270 sq.mtrs and as per the entry made in the village Form No. 7 & 12, at the time of granting non agricultural permission, the petitioners are required to pay 50 % of the market price by way of premium. It is the case of the petitioners that as the respondent was not deciding the application with malafide intention, the petitioners moved application before the Revenue Minister. Pursuant to the application submitted by the petitioners, the respondent passed order dated 29th May, 1999 fixing the premium at Rs.2,54,240/- being 70 % of the market price though as per the entry at the time of NOC permission, 50 % of the market value is required to be paid towards premium. The petitioners challenged the order dated 29th May, 1999 by filing review application under Section 211 of the Bombay Land Revenue Code before the Additional Chief Secretary [Appeals], Revenue Department, who by his judgment and order dated 22nd November, 1999 allowed the appeal by quashing and setting aside the order dated 29th May, 1999 and remanded the matter back to the Collector with direction to pass order in view of observations made in his order. Thereafter, the respondent has started fresh proceeding and the Mamlatdar Khanpur was held Panchakyas and inspected the lands in question and gave his recommendations with regard to the price and according to the information of the petitioners, the Panchakyas was recorded on 15th December, 2000 and accordingly given his opinion determining the market value of the lands in question at Rs.75/- per sq.meter. Thereafter, the petitioners also pointed out that inspite of the aforesaid facts and circumstances of the case, the

petitioner has order fixing the market value of the lands in question at Rs.183/- per sq. meter, thereby fixing the premium at Rs.2,90,560/- which according to the petitioner, is absolutely exorbitant, malafide and arbitrary especially in view of the observations made in the order dated 22nd November, 1999 passed by the Additional Chief Secretary [Appeals], Revenue Department. However, it is also pointed out by the petitioners, the respondent authority has on the same the determined the market value at the rate of Rs.70/- per sq.mtrs in respect of the land of Godhara town and the said land is quite similarly situated to the lands belong to the petitioners. Therefore, the order passed by the respondent on date 12th February, 2001 is impugned by the petitioners in the present petition.

So far as Special Civil Application No. 2345 / 2001 is concerned the case of the petitioners is that they are the owners of the lands bearing Survey No.92 situated at Limadiya, Taluka Lunawada admeasuring 578 sq.mtrs and as per the entry made in the village Form No. 7 & 12, at the time of granting non agricultural permission, the petitioners are required to pay 50 % of the market price by way of premium. It is the case of the petitioners that as the respondent was not deciding the application with malafide intention, the petitioners moved application before the Revenue Minister. Pursuant to the application submitted by the petitioners, the respondent passed order dated 29th May, 1999 fixing the premium at Rs.7,30,264/- being 70 % of the market price though as per the entry at the time of NOC permission, 50 % of the market value is required to be paid towards premium. It is the case of the petitioners that for the similarly situated land involved in Special Civil Application No.2344 / 2001, the review application was filed before the Additional Chief Secretary [Appeals], Revenue Department under Section 211 of the Bombay Land Revenue Code before the Additional Chief Secretary [Appeals], Revenue Department, who by his judgment and order dated 22nd November, 1999 allowed the appeal by quashing and setting aside the order dated 29th May, 1999 and remanded the matter back to the Collector with direction to pass order in view of observations made in his order. However, it is pointed out that the petitioners have not approached as the another person challenged the order before the Additional Special Secretary which was allowed and therefore, moved an application on 20th January, 2000 to decide and review its earlier order and decide the same afresh. * Thereafter, the respondent has started fresh proceeding and the Mamlatdar Khanpur was held Panchakyas and

inspected the lands in question and gave his recommendations with regard to the price and according to the information of the petitioners, the Panchakyas was recorded on 15th December, 2000 and accordingly given his opinion determining the market value of the lands in question at Rs.75/- per sq.meter. Thereafter, the petitioners also pointed out that inspite of the aforesaid facts and circumstances of the case, the petitioner has order fixing the market value of the lands in question at Rs.183/- per sq. meter, thereby fixing the premium at Rs.7,30,264/- which according to the petitioner, is absolutely exorbitant, malafide and arbitrary especially in view of the observations made in the order dated 22nd November, 1999 passed by the Additional Chief Secretary [Appeals], Revenue Department. However, it is also pointed out by the petitioners, the respondent authority has on the same the determined the market value at the rate of Rs.70/- per sq.mtrs in respect of the land of Godhara town and the said land is quite similarly situated to the lands belong to the petitioners. Therefore, in the present petition also, the order passed by the respondent on date 12th February, 2001 is assailed by challenging this petition.

#. I have considered the submissions of Mr.M.R.Shah, learned advocate appearing on behalf of the petitioners. At the first instance, it is pertinent to note that the lands in question involved in both these petitions are belong to Survey No.92 of village Limadiya, Taluka Lunawada. Mr.Shah, learned advocate for the petitioners has mainly contended that the Additional Chief Secretary [Appeals], Revenue Department having examined all the aspects of the matter, quashed and set aside the orders passed by Collector dated 29th May, 1999 with observations that the Collector has not taken into account the relevant aspects of sale deeds of last five years in respect of the surrounding lands. However, according to the petitioners, the market price of the land in question at the rate of Rs.75/- is just and reasonable. However, Collector has also observed that the the Collector concerned has not at all considered the important aspects of market price of the nearby lands, location of the lands in question from the road / highway and also observed that no reasonable opportunity of hearing was given to the petitioners. Considering all these aspects of the matter, the Revisional Authority has set aside the order passed by the Collector dated 29th May, 1999. However, inspite of the clear observations of the revisional authority made in order dated 21st November, 1999, the Collector has passed order on 12th February, 2001 grossly ignoring all these observations

made by the revisional higher authority. Not only that but one more important fact pertinent to be note that in the Panchakyas which been recorded by the Mamlatdar, Khanpur, wherein the market value of the lands in question at Rs.75/- per sq.meter. was suggested according to the opinion, has also been ignored by the Collector, Panchmahal in a clear arbitrary manner and resultantly the Collector has fixed and determined the premium of Rs.2,54,240/- and Rs.7,30,264/- respectively, which according to the submissions of Mr.Shah, in grave contradictions of the observations made by the Additional Chief Secretary [Appeals], Revenue Department. Mr.M.R.Shah, learned advocate has also submitted that the orders are passed by the Collector, Panchmahal on date 12th February, 2001 is also contrary to the principles of natural justice and in contravention of the observations of the revisional authority and therefore, the same are required to be quashed and set aside.

#. However, Mr.S.P.Sen, learned AGP appearing on behalf of the respondent has submitted that the Collector has passed orders dated 12th February, 2001 considering the market price for converting the agricultural lands into non agricultural lands and the Collector has considered the market price fixed by the committee constituted by the Government. Therefore, no illegality has been committed by the concerned authority. However, if no reasons are assigned by the Collector, in that case, the Collector may be directed to reconsider these matters in light of observations made by the revisional authority.

#. Having regards to the respective submissions of learned advocates for the parties and looking to the facts and circumstances of the case and considering the order passed by the Additional Chief Secretary [Appeals], Revenue Department, wherein the higher authority of the Collector in revisional proceedings has clearly in terms observed that no opportunity was given to the petitioners while fixing the market price. Not only that but important aspects such as consideration of sale deeds for last five years for the surrounding lands were also not taken into consideration, similarly the distance between the lands in question and the road / high way and market value of the nearby lands are not at all considered. Admittedly, while remanding the matters back to the Collector, the revisional authority has directed the Collector to decide the matters afresh taking into consideration all that aspects observed in his order. However, it is apparently seen from the bare perusal of the order passed by the Collector, Panchamahals that the Collector seems to have grossly ignored all these

directions and observations therein. Not only that as such there exists no details in the impugned orders that before passing the orders, any reasonable opportunity of hearing was given to the petitioners. Therefore, the Collector, Panchmahal vide orders dated 12th February, 2001 like a mandate imposed upon the petitioners to pay the amount determined by him. But it is apparent that the impugned orders are passed without following the observations of the revisional authority and moreover, no reasons are assigned for determination of said price. Therefore, according to my opinion, since the observations made by the Additional Chief Secretary [Appeals], Revenue Department in order dated 22nd November, 1999 have not been considered by the Collector, Panchmahal while determining the market value and the amount of premium, both these orders impugned in these two respective petitions, deserve to be quashed and set aside.

#. In the result, both these petitions are allowed. The orders dated 12th February, 2001 passed by the Collector, Panchmahal in respect of the land in question involved in these two petitions i.e. Special Civil Application Nos.2344 and 2345 / 2001 respectively are hereby quashed and set aside with a direction to the respondent - The Collector of Panchamahals to reconsider the matters in light of observations made in the order dated 22nd November, 1999 passed by the Additional Chief Secretary [Appeals], Revenue Department and taking into account the market price which was prevailing at the time when the petitioners filed application for N.A. permission. It is also directed to the respondent - Collector to pass a speaking order after giving an opportunity of hearing to the respective petitioners and shall finally decide the applications of the petitioners as directed above, within two months from the date of receiving the certified copy of this order. Rule is made absolute in each of the petition to the extent indicated above with no order as to costs. Direct service is permitted.

Date : 14-9-2001 [H.K.Rathod, J.]

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